

EPA Region 5 Records Ctr.



368984

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION AT DAYTON  
4 - - -  
5 CARGILL, INC., ET AL., :  
6 PLAINTIFFS, :  
7 -VS- :CASE NO. C-3-98-036  
8 ADVANCED FOUNDRY, INC., ET AL., :  
9 DEFENDANTS. :  
10 - - -

11 Deposition of Joseph P. Kwan, a  
12 Kelsey-Hayes 30(b)6 witness herein, taken by the  
13 defendants as upon direct examination pursuant to  
14 the Federal Rules of Civil Procedure and pursuant  
15 to Subpoena and Notice to Take Deposition and  
16 stipulations hereinafter set forth at the offices  
17 of Squire, Sanders & Dempsey, 4900 Key Tower, 127  
18 Public Square, Cleveland, Ohio, at 9:00 a.m. on  
19 Friday, May 30, 2002 before Pamela Sue Spangler,  
20 RPR, a notary public within and for the State of  
21 Ohio.

22 - - -  
23 APPEARANCES:  
24 On behalf of the Plaintiffs:

Spangler Reporting Services  
PHONE (513) 381-3330 FAX (513) 381-3342

6

1 (Exhibit No. 349 was marked for identification.)

2 (Witness sworn.)

3 MR. FAGUE: Good morning, sir.

4 THE WITNESS: Good morning.

5 MR. FAGUE: My name is Terry Fague,  
6 and I'm an attorney. I represent a number of the  
7 defendants, generator defendants, in the litigation  
8 that brings us here this morning.

9 JOSEPH P. KWAN

10 of lawful age, a Kelsey-Hayes 30(b)6 witness  
11 herein, being first duly sworn as hereinafter  
12 certified was examined and deposed as follows:

13 DIRECT EXAMINATION

14 BY MR. FAGUE:

15 Q. Could you please state your full name  
16 for the record.

17 A. It's Joseph P. Kwan.

18 Q. And that's spelled K W A N?

19 A. That's right.

20 Q. And according to the card you've

21 given me, you are Director, Environmental

22 Management for TRW?

23 A. That's correct.

24 Q. And your business address is Business

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1 Dayton Walther Company?

2 A. No.

3 Q. Sir, let me ask in general terms what  
4 have you done in preparation for your deposition  
5 this morning? And by that question I mean to  
6 include this sort of investigation you would have  
7 performed or caused others to perform on your  
8 behalf.

9 A. I work with our team, which includes  
10 legal counsel, and legal assistant to review the  
11 data gathered as well as participated in the phone  
12 conference call with Mr. Jack Wantz and also  
13 setting up the materials that were gathered for  
14 this purpose.

15 Q. Okay. And the materials that you're  
16 referring to, what materials were they?

17 A. I was provided with a notebook full  
18 of information. In summary -- including a summary  
19 of information for this particular -- for the  
20 Dayton Walther locations as well as the 104(e)  
21 response and excerpts from depositions.

22 MR. FAGUE: Counsel, do you have any  
23 problem providing us with a copy of the materials  
24 that the witness used to prepare for his

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1 deposition?

2 MS. SIEBENSCHUH: Not at all. I can  
3 give you right now, if you would like it, the  
4 summary sheet that he referred to.

5 MR. SIEGEL: Here's two copies of  
6 the summary and another one to mark, that would be  
7 fine.

8 MR. FAGUE: Thank you. When you say  
9 "summary sheet," this references various discrete  
10 documents that he has in his binder of materials  
11 there?

12 THE WITNESS: Right. I believe the  
13 rest of the documents you already have. The  
14 summary is --

15 MR. FAGUE: Probably so, I just  
16 haven't looked at them yet, so -- okay. Well,  
17 let's go ahead and mark this then.  
18 (Exhibit No. 350 was marked for identification.)  
19 BY MR. FAGUE:

20 Q. Before we get to the document that we  
21 just marked, let me hand you what's been marked as  
22 Defendants' Exhibit 349, it's just a copy of the  
23 Notice of Deposition. I'll just ask you, have you  
24 seen that document before?

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1 A. Yes, I have.

2 Q. That's the Notice of Deposition that  
3 was filed in this case to compel this deposition  
4 today, you're familiar with that?

5 A. Um-hmm.

6 Q. If you flip over to Schedule A, there  
7 is a number of discrete categories, I'm going to be  
8 asking you about each and every one of those, but  
9 is it fair to say those are the sorts of things  
10 that you investigated to prepare for your  
11 deposition today?

12 A. That's correct.

13 Q. Okay. I'm now handing you what has  
14 just been marked as Defendants' Exhibit 350.  
15 That's a copy provided by your counsel of the  
16 summary that you've referenced a few moments ago;  
17 is that correct?

18 A. Yes.

19 Q. Okay. Sir, to whom do you currently  
20 report?

21 A. I report to the Vice President of  
22 Health, Safety and Environmental Management.

23 Q. And who was it within the  
24 organization that designated you to testify as the

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Summary of Information  
Available to Kelsey Hayes re Dayton Walther Facilities

**I. Nature of Information Available to Kelsey Hayes and Steps Taken to Prepare for Depo**

A. Due to the closure of one of the DW facilities in 1990 and the sale of the other in 1998, Kelsey-Hayes' access to relevant documentation and individuals with knowledge is limited. In order to prepare for today's deposition, KH took the following steps:

1. Conducted a thorough search of KH records for any relevant documents. Any KH files relating to the DW facilities at issue herein would have been located in our offices in Livonia, Michigan. KH coordinated with legal assistants in the Livonia office, who ran searches for any files or documents relating to DW. No documents were located, other than those produced in response to the 104(e) request.
2. Located and interviewed former Dayton Walther employee, Jack Wantz. Mr. Wantz was employed by DW in various positions (from clerk to machine shop superintendent to Industrial Relations Manager) during the relevant time period. Mr. Wantz prepared an affidavit relating to the DW facilities, which was attached to KH's 104(e) responses. Due to the fact that the events at issue occurred over twenty years ago, Mr. Wantz emphasized that all he could provide was his best recollection.
3. Interviewed former KH employee, John Mogelnicki. Mr. Mogelnicki was employed by Kelsey Hayes as Manager of Environmental Engineering from approximately 1989 until 1995. Mr. Mogelnicki indicated that he had no first hand knowledge regarding the DW facilities at issue herein. He further indicated that everything he learned about the DW facilities is reflected in KH's 104(e) responses, which he authored.
4. Attempted to locate former DW employees Craig Ellis, Kurt Friedmann, Jerry Thoma, John Ramsey, Frank Postisil, and Mike Turner by searching KH's pension records. KH was unable to find any information regarding the location of Craig Ellis or Frank Postisil. KH was able to locate the following last known addresses: Kurt Friedmann, 120 Heatherwoode Circle, Springboro, Ohio 45066; Gerald Thoma, P.O. Box 41, Miamisburg, Ohio 45342; John Ramsey, 1012 Derringer Drive, Englewood, Ohio 45322. The following address was located for Mike Turner, but it is unclear whether this is the same Mike Turner that was employed at the DW Moraine plant: 2701 N. Marton Road, Madison, IN.

**DEFENDANT  
EXHIBIT**

**II. Schedule A Topic No. 1: Information about the identity of all of your past or current officers, employees, agents or representatives that during any of the years 1965 through 1990 contracted with, or had any business dealings with, The Peerless Transportation Co. ("Peerless"), IWD, and/or any other waste hauler or NSL, Inc. or the NSL Site.**

A. Based on the documentation reviewed and our conversation with Mr. Wantz, KH believes that the following former DW employees may have information regarding this topic:

1. Craig Ellis (former Maintenance Manager, Dayton)
2. Kurt Friedmann (former Maintenance Manager, Plant Manager, Dayton)
3. Jerry Thoma (former Maintenance Manager, Dayton)
4. John Ramsey (former Maintenance Manager, Plant Manager, Dayton)
5. Frank Postisil (former Environmental Manager, Dayton)
6. Mike Turner (former Maintenance Manager, Moraine)

**III. Schedule A Topic No. 2: Information concerning any contracts, purchase orders or other agreements between KH and any waste hauler for the transportation or disposal of waste materials from KH's facilities in the Dayton, Ohio area for the years 1965 through 1990.**

A. KH has no direct knowledge regarding this topic. Reference is made in Peerless' 104(e) response to an apparent agreement for at least some portion of 1989 between Peerless and DW to transport foundry product from DW. KH has not located any internal documentation, and Mr. Wantz had no knowledge, regarding this topic.

**IV. - Schedule A Topic No. 3: Information you have as to the physical layout of all KH facilities located in the Dayton, Ohio area.**

| Facility                        | Physical Layout                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1366 Miami Chapel, Dayton, Ohio | <p><u>Prior to facility closing in 1981 or 1983:</u></p> <ul style="list-style-type: none"> <li>• One story building</li> <li>• Consisted of a foundry and two machine shops.</li> <li>• Foundry contained one molding machine, lines where cores were poured, cooling equipment, a shake out room, a cleaning room and two furnaces.</li> <li>• One machine shop was located directly adjacent to the foundry. The other was located approximately 200 yards south of the foundry.</li> <li>• The machine shops contained multimatrics, drill presses and bullards.</li> </ul> <p><u>After the facility reopened in 1985/1986:</u></p> |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | <ul style="list-style-type: none"> <li>• Reopened as Dayton Casting Center. Same physical location but mailing address changed to 1261 Morris Avenue, Dayton, Ohio.</li> <li>• Foundry was substantially the same as prior to closing, but the processes were different. The foundry changed from a cast steel foundry to a ductile iron foundry.</li> <li>• The machine shops were closed. The machine shop that was formerly adjacent to the foundry was converted to a warehouse. The other was leased to Mayo Industries.</li> </ul> |
| 2800 East River Road, Dayton, Ohio  | <ul style="list-style-type: none"> <li>• Corporate Offices and test lab</li> <li>• Three story building.</li> <li>• Did not contain any production processes.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                 |
| 2490 Arbor Boulevard, Moraine, Ohio | <ul style="list-style-type: none"> <li>• One story building</li> <li>• Manufacturing plant and machine shop.</li> <li>• Contained multimatics, drill presses, assembly lines and painting.</li> </ul>                                                                                                                                                                                                                                                                                                                                    |

V. Schedule A Topic No. 4: Information about the identity of all NSL, Inc.; Peerless; IWD; or NSL Site officers, employees, representatives or agents that you dealt with during the years 1965 through 1990.

- A. KH has no direct knowledge regarding this topic. Reference is made in Peerless' 104(e) response to an apparent agreement for at least some portion of 1989 between Peerless and DW to transport foundry product from DW. The response attaches a letter from Peerless President and General Manager, Carl Bridges to Craig Ellis of Dayton Walther. However, KH has not located any internal documentation, and Mr. Wantz had no knowledge, regarding this topic.

VI. Schedule A Topic No. 5: Information about the production processes and other operations conducted at the KH facilities in the Dayton, Ohio area during 1965 through 1990; and the raw materials, intermediate materials, and waste or by-product materials that were used in or generated by those materials.

| Facility                             | Production Processes and Years of Operation                                                                                                                                                                                                                                                                                                                                    | Waste That May Have Been Generated                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1366 Miami Chapel Road, Dayton, Ohio | <ul style="list-style-type: none"> <li>• Facility was closed from 1981 or 1983 until approximately 1985 or 1986.</li> <li>• When it reopened in 1985 or 1986, the facility became known as the Dayton Casting Center.</li> <li>• The physical location of the building was the same as prior to closing, but the mailing address was changed to 1261 Morris Avenue.</li> </ul> | <p><u>Prior to closing in 1981 or 1983:</u></p> <ul style="list-style-type: none"> <li>• Foundry operations generated foundry sand, collection dust, slag, and some sludge.</li> <li>• Mr. Wantz believed that some sludge-type material was generated by the foundry's insecure core drying process, which was installed in the 1970's or 1980's.</li> <li>• Machine shops may have</li> </ul> |



|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | <ul style="list-style-type: none"> <li>• This facility also had a plant entrance on South Broadway.</li> <li>• Facility closed in October of 1990.</li> </ul> <p><u>Prior to closing in 1981 or 1983:</u></p> <ul style="list-style-type: none"> <li>• Consisted of a foundry and two machine shops.</li> <li>• Foundry contained one molding machine, lines where cores were poured, cooling equipment, a shake out room, a cleaning room and two furnaces.</li> <li>• The machine shops contained multimatics, drill presses and bullards.</li> </ul> <p><u>After facility reopened in 1985/1986:</u></p> <ul style="list-style-type: none"> <li>• Foundry was substantially the same as prior to closing, but the processes were different. The foundry changed from a cast steel foundry to a ductile iron foundry.</li> <li>• The machine shops were closed. The machine shop that was formerly adjacent to the foundry was converted to a warehouse. The other was leased to Mayo Industries.</li> </ul> | <p>generated some waste coolant oil. Shavings from the machine shop were recycled.</p> <p><del>• Sand, dirt and slag was self-hauled to Vance Road Landfill and a place on the other side of the river, known as Crilliot's. Mr. Wantz did not recall where sludge or coolant oil was disposed.</del></p> <ul style="list-style-type: none"> <li>• Mr. Wantz did not have any knowledge or recollection that any waste material was taken to Valleycrest.</li> </ul> <p><u>After facility reopened in 1985/1986:</u></p> <ul style="list-style-type: none"> <li>• Same types of foundry waste were generated. Machine shops were closed.</li> <li>• Foundry waste was no longer self-hauled. Mr. Wantz had no knowledge regarding which independent haulers were used.</li> <li>• Shipping docs produced by 'KH' in its 104(e) response document some DW shipments to the Brandt Pike Disposal Site during 1987, 1988 and 1989.</li> <li>• In addition, reference is made in Peerless' 104(e) response to an apparent agreement for at least some portion of 1989 between Peerless and DW to transport foundry product from DW. The response attaches a letter from Peerless President and General Manager, Carl Bridges to Craig Ellis of Dayton Walther.</li> </ul> |
| 2800 East River Road, Dayton, Ohio  | Corporate offices and test lab. No production processes.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Mr. Wantz was not aware of any waste being generated from this facility.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2490 Arbor Boulevard, Moraine, Ohio | <ul style="list-style-type: none"> <li>• <u>Manufacturing plant and machine shop.</u> Contained multimatics, drill presses, assembly lines and painting.</li> <li>• Facility was sold to Meritor in 1998 and closed in 2000.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>• Mr. Wantz did not believe that any sand or slag was generated from this facility. He believed there might have been coolant waste. This waste was hauled out by an independent hauler, but Mr. Wantz did not recall the name(s) of any such haulers.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

VII. Schedule A Topic No. 6: Information about the origin, chemical composition, characteristics and physical state of raw materials, intermediate materials, and waste or by-product materials used or generated at the KH facilities in the Dayton, Ohio area from 1965 through 1990.

- A. Peerless' 104(e) response attaches what appears to be analytical data from foundry product from DW.
- B. Shipping docs produced by KH in its 104(e) response document some DW shipments to the Brandt Pike Disposal Site during 1987, 1988 and 1989 of materials described only as "sand, sludge, slop, slud, lugger, trash, ash, cinder, slag, dust, dirt, tanker, unknown." KH has not located any internal documentation, and Mr. Wantz had no knowledge, explaining what these descriptions refer to or providing any information regarding their chemical composition, etc.

VIII. Schedule A Topic No. 7: Information about the containers in which raw materials, intermediate materials, and waste or by-product materials at the KH facilities in the Dayton, Ohio area were received, stored, treated, transported, or disposed during the years 1965 through 1990.

- A. The 1987, 1988 and 1989 shipping documents produced by KH in its 104(e) response make reference to "lugger" and "tanker." However, the meanings of these terms in the shipping documents is unclear. Mr. Wantz had no knowledge regarding the meaning of these terms in the shipping documents and KH has not located any information that sheds light on this issue.
- B. Mr. Wantz recalled that the sludge-type material generated by the foundry's Isecure core-drying process (which was installed at some point in the 1970's or 1980's) may have been stored in drums. He recalled that such drums were properly disposed of, but he did not recall the name(s) of any of the haulers.

IX. Schedule A Topic No. 8: Information about the disposal of drums or other containers from the KH facilities in the Dayton, Ohio area during the years 1965 through 1990.

- A. Mr. Wantz recalled that the sludge-type material generated by the foundry's Isecure core-drying process (which was installed at some point in the 1970's or 1980's) may have been stored in drums. He recalled that such drums were properly disposed of, but he did not recall the name(s) of any of the haulers.

X. Schedule A Topic No. 9: Information relating to policies or practices at the KH facilities in the Dayton, Ohio area for disposal of waste materials from 1965 through 1990.

- A. KH has no direct knowledge regarding this topic.

**XI. Schedule A Topic No. 10: Information about the identity of your current or former officers, employees, agents, representatives or consultants who work or worked in the maintenance and environmental areas of any KH facility operated in the Dayton, Ohio area or who might have knowledge relating to the information sought in this Schedule A.**

A. Based on the documentation reviewed and our conversation with Mr. Wantz, KH believes that the following former DW employees may have information regarding this topic:

1. Craig Ellis (former Maintenance Manager)
2. Kurt Friedmann (former Maintenance Manager, Plant Manager)
3. Jerry Thoma (former Maintenance Manager)
4. John Ramsey (former Maintenance Manager, Plant Manager)
5. Frank Postisil (former Environmental Manager)
6. Mike Turner (former Maintenance Manager, Moraine)

**XII. Schedule A Topic No. 11: Information relating to the handling, transportation, and/or disposal of waste from the KH facilities to or at the NSL Site or any other landfill site or incinerator in the Dayton, Ohio area from 1965 to 1990.**

A. See chart in VI, *supra*.

**XIII. Schedule A Topic No. 12: Information as to the volume of waste generated at the KH facilities in the Dayton, Ohio area from 1965 to 1990.**

A. The 1987, 1988 and 1989 shipping documents produced by KH in its 104(e) response make reference to "loads." However, the size of the "loads" referenced in the shipping documents is unclear. Mr. Wantz had no knowledge regarding the meaning of the term "load" in the shipping documents and KH has not located any information that sheds light on this issue.

B. A December 1994 letter from Peerless to Martin, Seltzer at Porter, Wright, Morris & Arthur alleges that Peerless hauled from DW from 1986 through part of 1989 and transported 8 loads/day for 26 months for approximately 4956 loads in a 9 yard tub for a total of 44,600 yds. KH has not and cannot verify these estimates.

**XIV. Schedule A Topic No. 13: Information as to any analyses or testing of waste streams from the KH facilities in the Dayton, Ohio area.**

A. Peerless' 104(e) response attaches what appears to be analytical data from foundry product from DW.

**XV. Schedule A Topic No. 14: Information regarding KH' corporate organization, corporate history and corporate successors, if any.**

A. In 1997, DW was merged into KH Corporation. KH is currently an indirect wholly owned subsidiary of TRW.

XVI. Schedule A Topic No. 15: Information regarding KH divisions, plants or facilities operated by KH in the Dayton, Ohio area.

A. See chart in VI, *supra*.